

1508/1014

July 29th, 1725.

Unto the Right Honourable, The Lords of Council and Session

The Petition of the several Brewars in a  
about *Edinburgh* under subscribing,

*Humbly sheweth,*

**T**HAT your Petitioners were very much surpris'd, to receive a Citation Yesternight, by the Hand of one of your Lordships Macers, to appear before you this Day, be the 30th of July, at Nine of the Clock in the Morning to enact our selves, as we are appointed by the Act of *Sederunt* that Date, with Certification as effects:

A Citation so summary, and of such a Nature, was to us intirely new, we had seen or heard of no such Example, and having no intimation made us to what Purpose, or to what Effect we were to enact our selves, nor so much as a Copy deliver'd of that Act of *Sederunt* mentioned in the Citation, and not knowing any Act of Parliament, allowing any such Citations in any Case; we were at a Loss to imagine what this could mean, or if the Summons did really proceed from your Lordships Authority; We had heard of Citations upon Complaints for Contempt of your Lordships Authority, and Act of *Sederunt*, but never had heard or seen, a Citation to enact upon Warrant of an Act of *Sederunt* of your Lordships, or any Court whatsoever; And we could call to Remembrance, very few Acts of Parliament, by which any such Thing had been done, yea, none at all upon which Citations had been so summarily; And with Regard to particular Persons, without their being so much as once heard, the Forms of passing Acts of Parliament, do afford an Opportunity for private Persons to Petition, and to appear and Object, when their Interests are concern'd; And we must submit it to your Lordships, if Acts of *Sederunt* of this Kind have any Privilege by Law

gives them so much stronger Effects, than Acts of Parliament  
selves.

This led us severally to enquire for this Act, which was the War-  
of our Citation, and now have seen it published, not under  
Name of an Act of Sederunt, but according to the Title, *An  
for preventing the Want or Scarcity of Ale, or Beer, and  
d in the Good Town of Edinburgh*; Wherein there appears  
al Things so Extraordinary, and touching so very nearly, not only  
Interests, but our personal Liberty, and as we apprehend the Liber-  
the Subject; That we hope, since we had no Opportunity to be  
d before the Act passed; and since it is truly more the Nature  
Judgment (*Parte inaudita*) than of an Act, we are intitled to  
esent our Objections against it, and to desire a Reconsideration  
far it is consistent with Law.

And in the first Place, We do apprehend that this Act, Arrest,  
Judgment, is directly contrair to the express Words of the *Claim  
Right*, one Article whereof is, *That the charging the Leiges  
b Laburrows at the King's Instance, and imposing of Bonds  
hout the Authority of Parliament, &c. was contrair to Law.*  
conceive, nothing can touch the Article so near, as the Act we  
ect against, does. It proceeds upon a Memorial, at the Instance  
his Majesty's Advocate, in Form of a Complaint, that the Brew-  
are entred into a Resolution and Confederacy, to do certain Things  
the Overthrow of all Good Government, to the great Hurt and  
s of the most Innocent of his Majesty's Subjects, and which is  
ft Dangerous and highly Criminal; That by Law it belongs to  
ur Lordships to prevent these Mischiefs, and take Care of the  
olick Safety. Upon this; in Virtue of your Lordships Act, we are  
marily charged, without further Evidence, to enact our selves, not  
do what he States as Criminal. What is this other than a Charging  
with Laburrows at the King's Instance, or which is worse, at the  
tance of His Advocate, without His Authority, only the Charge  
more summary, and the Facts with Relation to which we are  
charged





charged contrary to no Law yet made, whereas the Lawburs complain'd of by the *Claim of Right*, related to Crimes that provided against by exprels Statute.

Again, the Article of the Claim of Right mentions the impo of Bonds without the Authority of Parliament; Is not the enact and binding our selves to brew, A Bond? Does not this Act of derunt impose it without Authority of Parliament? We appreh the Case is very plain, the Claim of Right makes no Distinction Causes; and we are not able to discover any Distinction that reconcile this Order of your Lordships, with the Articles in Claim of Right, if the Claim of Right be abolished by the Un that we must submit, but at least we would hope to see some or Example for such a Proceeding in *Great Britain*: We believe none can be mention'd in any free Nation.

In the next Place, if this were not so expressly contrary to Claim of Right, We hope we may be allowed to doubt of your Lordships Powers to make such an Act, which is stronger and goes so much further than any Act of Parliament that ever was made. We find several Laws giving a Power to Magistrates, Sheriffs, to regulate Prices of Vivers within their Jurisdictions; and know your Lordships have been in Use to make such Regulations tho' without any Authority or Power given you by Parliament far as we know; and how far that Custom is legally supported need not enquire, but we find no Act of Parliament empower any Magistrate, or Court whatsoever, to oblige his Majesty's Subjects to practise any Trade or Calling except they think fit, for an Hour or Day longer than they find it convenient; nor less without Proof or Enquiry, whether they are able or capable to exerce such Trade, yea, or not: The Parliament have never gone so far, because, as we apprehend, such an Act would be inconsistent with the Liberty of any free Nation or Subject; but if the Parliament had done it, as no Doubt it is in their Power to do any Thing, we know no other Power or Authority whatsoever that can

And this we must submit to your Lordships, who are the sole Explainers, but not yet the Makers of Laws.

We have looked into this Act of Sederunt, to see if it was founded on any Law, which probably we might be ignorant of; but we find no Law nor Act mention'd, neither in his Majesty's Advocate's Memorial, nor in your Lordships Act; it is easy for his Lordship to say, That such a Thing by Law belongs to your Lordships; but what is his Authority? Or where is the Precedent? The Act says, *That the Lords considering the Power wherewith they are vested, and the Trust reposed in them, and which on all proper Occasions hath been exerted by the Court of Session in ancient and later Times for regulating and taking Care of what concerns the Provisions and Maintainance of the City wherein the said Lord resides.* And we find very strong Powers given to your Lordships by Acts of Parliament in Point of Jurisdiction, and Power to make Regulations concerning the Forms of Procedure before Courts, but we are intirely ignorant of any Powers invested in you to oblige any Person whatsoever, to follow any Employment four or Minute longer than he finds convenient. And we find general Naratives of Powers will not support Extensions of this unless the Law can be pointed out, giving such a Power as this Act is exercis'd, for admitting your Lordships Power of regulating Prices, for which however there is no express Law, we cannot see the Consequence, that therefore you have a Power not only to settle the Price, but to oblige particular Persons to carry on such particular Trade. At this Rate the Power given to Magistrates to regulate the Price of Wines, would enable these Magistrates to oblige the Merchants to import them whether they would or not, whether they had a Stock to Trade upon, yea or not. That is to say, to raise our Cae.

Our Petitioners find these general Words in the Act of Sederunt, *we are of what concerns the Provisions and Maintainance of the City*: But we do not find even these Words in any Law; and indeed



indeed it would be a strong Extension of the Power of taking Care to oblige particular Persons to furnish, whether they would or not or whether they could or not. But this Act goes so far as not to regard any of the two.

As to the Particulars of the Act, we must in the first Place observe it proceeds upon a Complaint of Facts, of which there is no Evidence, and in which there is no Truth, for First, the Complaint mentions, *Brewers having a Privilege to furnish the City with Ale*; we know no Privilege any of us have more than any other Burger, our Practising of the Trade is voluntary, every Man may do it as well as we. 2dly It says, *The Brewers have entered into a Resolution and Confederacy*; if it be mean'd that we have entered into any Bond or Association, the Fact is false, we are single Persons, and act by our selves; we may have signified our Opinion, that if such a Duty be levied, considering the other Duties we are subjected to, particularly to the Town of *Edinburgh*, such as the Two-pennies upon the Pint, and their Demands of dry Moulters, we are unable to carry on the Trade of brewing: this is neither a Crime, nor unlawful Confederacy, we cannot comprehend how we are obliged to furnish and maintain the Town at our Expence and Loss; And we hope we are Judges for our selves severally of what we can do, and that we have the natural Liberty of Men and free Subjects, not to be forced to think what we cannot, and what we are unable to perform.

The Act mentions the Notoriety of the Facts set forth in the Advocate's Information and Memorial; it is impossible for us to answer an Assertion of Notoriety, but we must be forgiven to deny every Fact therein set forth, if it be not this, that we think our selves unable to carry on the Trade of Brewing without great Loss, if we are subjected to so many Duties.

The Act recites a Custom in the Court of Session, in exercising such Power; We do not know any single Instance of such a Power ever having been exercised, either in the Court of Session, or in any other Court within any free State or Kingdom, yea, we do not know

A such an Order being made by the most absolute Power or Government ever was, to Order without Limitation, Persons to follow Trade, and not be free of complying, even upon the undergoing any Penalty whatsoever.

Your Lordships are pleased to declare, *That it is illegal for common-Brewers, &c. at once to quit or forbear the Exercise of their Occupations, when they are in the sole Possession of the Materials, Houses and Instruments to carry on such Trade:* But in the first Place we are single Persons, we are neither obliged to know the Actions of one another, nor be govern'd by them; and if Hardships be put upon us so strong, *That every Man finds he cannot bear them, but must give over his Trade,* it is very extraordinary to make this a Crime. *2do;* We know no Law yet hindering any one Brewer to give over his Trade when he pleases; and if there be no Law for that, we do not understand, how, *without any Law,* our giving over at once, can make a Crime: We beg to know, *How far this is to go? How many may give over without being Criminal? Or how many giving over, will make the Thing amount to a Crime? Where is the Law we have defy'd, or that Statute we have contemned?* We shall not enquire into your Lordships criminal Jurisdiction; but if there is no Law, we apprehend there is no Transgression: And if the Legislature ever think fit to make such a Law, the Subjects will be at Liberty to keep out without the Reach of it, by not undertaking a Trade which they must continue at, *Whether they be able or not.* We know no Instance of this in Scotland, except in the Case of *Coal-Hewers.*

Your Lordships have been pleased to require and ordain, *Every Brewer and others, who have the Privilege of furnishing the City with Ale, to carry on their Trade in the Way and Manner, that for the Space of one Month immediately preceeding the Act, they did exerce;* and carry on the same till the first Day of November.

But first, as to the Power of making such an Order, and how far it is consistent with the *Liberty of a free Subject,* is already

sub-



submitted to your Lordships. 2do, Who these are that have the Privilege of furnishing the City—we know not; if there be such Privilege, this must comprehend all the Brewers of the Nation for all have it alike. 3tio, All Brewers within *Edinburgh* have been in Use, and are under a Necessity to Brew a 4th Part less in Time of Vacation, than in Time of Session, and must do so, because of want of Consumpt; yet by this Act we are obliged to enact our selves, *To Brew as much during the whole Vacation as we have done in the throngest Month of the Session*; we would beg to know what we are to do with it. 4to, We are to enact our selves, *Whether we have Malt or not; and whether we have Money to buy it or not*; for your Lordships have not taken the Trouble so much as to enquire what Stock we have either of Malt, Bear or Money. 5to, We beg Leave to know, what we are to do, if the Retailers won't take so much off our Hand, as they have done for a Month past; or what if one or more of us lose our Customers, and they go to other Brewers; it would seem highly necessary, before subjecting us to such an Act, to make another Act, obliging the Retailers not to desert or abandon us their former Customers till the first of *November* next; and to oblige the Lieges to drink as much as they have done for a Month before; and to make them severally find Caution to us for that Effect; for we cannot entirely rely upon their Word, if they should even enact themselves for the Performance. These Considerations must shew, *That the Act hath been somewhat precipitant, and is inextricable; and no Wonder if it happen so, when the Way to it was prepared by no Law.*

After what is said, we need not take further Notice of the Novelty of the Thing, not only to make an Act of Sederunt in a Matter of this Kind, but oblige the Subjects to enact themselves to obey it. We apprehend it is as far as the Parliament has ever gone, except in some very particular Cases to make the Law; and if it be transgressed, to leave the Transgressor to undergo the Censure of it.

Upon the Whole, we do humbly insist, That this Act is contrary to *The Claim of Right*, without Law or Example, and impracticable in it self.

*May it therefore please your Lordships, in Consideration of the Premises, to repeal this Act, or stop any Execution of it, or to allow your Petitioners, in a Matter that so much concerns their personal Liberty, the Liberty of every free Subject, and the Safety of their Families, to be heard against the Act by their Council; for indeed we apprehend the Effect of this, in Place of obliging us to continue Brewing, must be putting us under a Necessity instantly to give over.*



*Sic subscribitur.*

**H**ugh Cleghorn, Alexander Wilson, Joseph Cave, Adam Muir, William Tunoch, James Adamson, John Mitchel, Robert Campbell, Adam Thomson, Archibald Ogilvie, Robert McLellan, Thomas Shiell, Patrick Anderson, James Ramsay, Robert Hog, Robert Rew, Patrick Scot, Maurice Cairns, John Bell, Mungo Rainy, Samuel Schaw, James Wat, William White, James Robertson, John Richardson, Thomas Graham, James Findlay, Robert Aitken, Robert Maxwell, James Leslie, John Simpson, Robert Young, Patrick Thomson, Alexander Cleghorn, James Gillespie, Thomas Scot, junior, William Hay for Baillie Hay, James Steill, David Lindsay, James Sheill, Alexander Crawford, Thomas Wood, William Bruce, Alexander Gray, Andrew Mitchell, William Hamilton, William Lithgow, William Fleeming, John Pringle, Walter Hepburn, Malcolm Alexander, John Angus, Robert Douglas, Andrew Gardiner, Walter Scot, Thomas Scot senior, James Forrest, Alexander Young, Robert Montgomery for his Father, Sophia Bennet, Agnes Bart, Robert Espline, &c.